

EXPLANATORY MEMORANDUM TO
THE PROHIBITION OF KEEPING OR RELEASE OF LIVE FISH (SPECIFIED SPECIES) (ENGLAND) ORDER

2014 No. 143

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of this instrument is to provide improved protection against potentially invasive non-native fish species which are capable of surviving in colder English waters, whilst ensuring established trade can continue unaffected.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 This instrument is made under the Import of Live Fish Act 1980. The instrument replaces the Prohibition of Keeping or Release of Live Fish (Specified Species) Order 1998 (“the 1998 Order”) in relation to England. The instrument also replaces the Prohibition of Keeping or Release of Live Fish (Specified Species) (Amendment) (England) Order 2003 (“the 2003 Order”).
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 Non-native fish species pose a significant threat to native species through predation and competition. They have potential impacts on biodiversity of habitats, ecosystems and commercial and recreational fishery waters. A recent report estimated the current cost of all invasive non-native species to the British economy at approximately £1.7 billion per year. Freshwater businesses such as angling sites can also suffer if they have to be closed down in order for an

eradication programme to take place. Examples of costs for eradicating topmouth gudgeon, a highly invasive non- native fish, range from £18.1k to £194k at fisheries in North Yorkshire and Devon.

- 7.2 The risks from non-native fish species have, for many years, been managed by licencing under the Import of Live Fish Act 1980 (ILFA) and through aquatic animal health rules preventing trade in temperate fish species. However, this changed as a result of the harmonisation of fish health rules under European Commission Directive 2006/88/EC. Consequently, approximately 20,000 non-native fish species capable of surviving in colder British waters can now be kept in England and we need to introduce controls to ensure any potentially damaging alien fish species do not become established in our waters.
- 7.3 ILFA provides a vehicle for introducing the necessary controls. The 1998 Order, as amended by the 2003 Order, prohibits the keeping or release of 47 species of non-native fish without a licence. We propose to replace the 1998 Order, as amended, with an improved Order which prohibits the keeping or release, without a licence, of all 20,000 non-native fish species. However, we will group these in 24 different taxonomic orders rather than listing individual fish species. . This will enable us to introduce a new, more effective, system of regulation that will better protect biodiversity and fisheries against the threats posed by non-native fish, and which will reduce burdens on Government and industry
- 7.4 All fish species listed that are already established in trade in England and those of tropical/sub-tropical origin will be placed on a general licence, permitting their keeping as ornamental fish under appropriate conditions, which will come into force at the same time as the Order. As the new Order will now list non-native fish at a taxonomical level, any new non-native fish to be added to the trade can simply be assessed for risk and then be licenced, if appropriate; there will be no need to change the legislation for each such fish removing potential burdens from industry and Government.
- 7.5 The aim of the policy is to limit the likelihood of the introduction of invasive fish species. However, it is not possible to quantify the change in probability of introduction of invasive fish resulting from this change in legislation, as it is not known if the costs of eradication of one species are applicable to the eradication of other potential non-native species; and the geographical scale of any potential spread of non-native species is unknown. However, the Order will allow for proactive management of non-native fish species to protect biodiversity whilst still being sufficiently flexible to enable established industries to continue to operate successfully and to exploit new market opportunities without increasing the risks to native species and biodiversity.
- 7.6 This is a specific measure that applies to very specialist sectors. Defra has fully consulted with the major representatives of the affected sectors, who are supportive of this legislation and the approach proposed by us. We do not

anticipate any controversy as a result of introducing this instrument and the instrument is not politically sensitive.

8. Consultation outcome

- 8.1 A total of five responses were received during the original consultation period, which ran from 19 January 2010 to 13 April 2010. Four of the five responses (including the main representative organisations of the affected sectors) explicitly supported this proposal. The fifth respondent broadly supported the need for more control relating to non-native species. Four respondents explicitly recognised the key advantage of the proposed change in requiring temperate (i.e. cold-water) non-native species to be risk assessed prior to their use, thereby reducing the risk of potentially invasive new species becoming established. All respondents recognised that the proposal represented an improvement on current arrangements where species have to be specifically listed before any controls can be applied.
- 8.2 Only three of the five responses directly answered the consultation question as to who should bear the costs associated with future risk assessments. Two responses noted that as it is likely that those wishing to import new temperate non-native species would be commercial companies wishing to seek a profit from the enterprise, the industry should bear the cost of risk assessment. One response stated that the cost of risk assessment should be met by Government.
- 8.3 One of the responses expressed some concerns about the impact of the proposed measures on the ornamental trade and stressed the importance of applying controls across all sectors in an even-handed manner.
- 8.4 Defra concluded that the industry should finance any full risk assessments of proposed new temperate freshwater species. In some instances, simple pre-screening assessments of selected candidate species may be feasible and previously completed risk assessments might also be available. While this might introduce a financial burden on the industry, this would only apply to new temperate species and is consistent with current arrangements in other industries. This would still allow expansion in the variety of temperate freshwater species where the industry felt there was sufficient demand and suitable species were identified.
- 8.5 The five original respondents were contacted again in May 2013 and asked to reconfirm their views on the proposal. Three of the original respondents confirmed their views remained unchanged (including the main representative bodies of the affected sectors). There was no response from the remaining 2 respondents.
- 8.6 Defra's Fish Health Inspectorate has continued discussions with the respondent who raised concerns relating to the ornamental trade regarding how the new arrangements will be applied practically. The respondent has provided subsequent written confirmation they are content with the proposed approach following the conclusion of these discussions earlier in 2013.

9. Guidance

- 9.1 The Fish Health Inspectorate (FHI) have already engaged the relevant trade associations on the impact of the legislation which is minimal for existing trade in non- native species. FHI will provide notification of the changes to industry and produce guidance on the new risk assessment arrangements to all current ILFA licence holders.

10. Impact

- 10.1 The impact on business is minimal. There are no transitional costs and Government do not charge for licences. There is a small cost associated with administration of licence applications and site visits of £0.003m and £0.0015m respectively. There is also a small cost of £0.01m per annum associated with future impact assessments for new temperate freshwater species. However, this is considered to be appropriate and proportionate in relation to the size and value of the affected sectors.
- 10.2 The impact on the public sector is minimal. There is not expected to be any extra justice impact arising from the new arrangements. There are costs associated with advice and site visits related to licence applications of £0.003m and £0.02m respectively.
- 10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is to include all trade on existing non-native fish species on a single general licence.
- 11.3 As the affected sectors consist mainly of small businesses and there are minimal transitional costs Defra has been granted an exemption to the moratorium for this Order.

12. Monitoring & review

- 12.1 A key measure of success is reduced availability of highly invasive non-native fish in the fish trade and in our inland waters. Defra will undertake regular reviews of the legislation at a maximum of five-year intervals from the date the instrument comes into force.

13. Contact

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